

# Rules Review Commission

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## **Joint Legislative Administrative Procedure Oversight Committee**

Update: January 9, 2018

# Periodic Review and Expiration of Existing Rules

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NCGS § 150B-21.3A



# Periodic Review Process

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- Requires agencies to conduct a review and classify their rules at least every 10 years:
- Classifications are
  - **Necessary with substantive public interest.** – Means any rule for which the agency has received **public comments** within the past two years. A rule is also "necessary with substantive public interest" if the rule affects the property interest of the regulated public and the agency knows or suspects that any person may object to the rule.
  - **Necessary without substantive public interest.**– Means a rule for which the agency has not received a **public comment** concerning the rule within the past two years. A "necessary without substantive public interest" rule includes a rule that merely identifies information that is readily available to the public, such as an address or a telephone number.
  - **Unnecessary rule.** – Means a rule that the agency determines to be obsolete, redundant, or otherwise not needed.

# Periodic Review Outcomes

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## Determination

- Necessary with substantive public interest
- Necessary without substantive public interest
- Unnecessary

## Resulting Action

- Rule must go through re-adoption process
- Rule stays in the Code (as is)
- Rule is removed from the Code

# Periodic Review - Progress So Far

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- 21,094 Rules subject to the process (not counting Building Code Rules):

	March 7, 2016	January 4, 2018
Rules that have been reviewed and posted by agencies	8,168	16,004
Rules that have made it to RRC determination	6,035	13,469



# Periodic Review - Progress So Far

Determination results thus far:

	March 2016	January 2017	January 2018
Readoption	1,924 (31.88%)	2,560 (26.41%)	3,517 (26.11%)
Remain in Code	3,488 (57.80%)	5,866 (60.51%)	8,319 (61.76%)
Removed from Code	623 (10.32%)	1,268 (13.08%)	1,633 (12.12%)

The Code subject to the process has been calendared for reports through June 2019 and for readoptions through January 2023.

# House Bill 162

Proposed Conference Committee Substitute H162-PCCS40646-SB-7

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- RRC continues to support Sections 1-3 of Proposed Conference Committee Substitute
- Section 4- RESTRICTIONS ON RULES WITH SUBSTANTIAL FINANCIAL COSTS
  - Consider defining what is a “set of rules”
  - Expressly address/clarify whether this proposed section (NCGS § 150B-19.4) applies to readoption of rules pursuant to NCGS §150B-21.3A (Periodic Review)

North Carolina State Board of Education

v.

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The State of North Carolina and the  
North Carolina Rules Review Commission



# Why Case is Important- Generally

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**“A rule is not valid unless it is adopted in substantial compliance with this Article” (NCGS §150B-18)**

Chapter 150B assures rules undergo **public notice** (NCGS §150B-19.1(c)) and **public comment** (NCGS §150B-21.2). RRC review assures that a rule:

- 1) is **within the authority delegated** to the agency by the General Assembly.
- 2) is **clear and unambiguous**.
- 3) is **reasonably necessary** to implement or interpret an enactment of the General Assembly, or of Congress, or a regulation of a federal agency. The Commission shall consider the cumulative effect of all rules adopted by the agency related to the specific purpose for which the rule is proposed.
- 4) was **adopted in accordance with Part 2 of this Article**.

**In short- Sunshine on the rulemaking process**

**with opportunity for public input and also for review to make sure it is clear, within authority and promulgated in accordance with the procedural protections afforded by the APA.**

# Why this case is important- Specifically

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## Chapter 115C: Elementary and Secondary Education

### § 115C-2. Administrative procedure.

All action of agencies taken pursuant to this Chapter, as agency is defined in G.S. 150B-2, is subject to the requirements of the Administrative Procedure Act, Chapter 150B of the General Statutes. (1981, c. 423, s. 1; 1987, c. 827, s. 1.)

### § 150B-2. Definitions.

(1a) "Agency" means **an agency or an officer in the executive branch of the government of this State and includes the Council of State**, the Governor's Office, a board, a commission, a department, a division, a council, and any other unit of government in the executive branch. A local unit of government is not an agency.



# Case Timeline

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- **November 7, 2014**- Complaint filed- 7 counts
- **July 1, 2015**- Judge Gesner Rules on hearing, grants summary judgment for SBOE
- **July 27, 2015**- RRC files timely notice of appeal to Court of Appeals
- **March 2, 2016**- Court of Appeals dismisses appeal on grounds of jurisdiction/Constitutional question (NCGS §7A-27(a1))
- **March 28, 2016**- RRC files Writ of Certiorari and Notice of Appeal to Supreme Court
- **June 9, 2016**- Supreme Court vacates Court of Appeals March 2, 2016 dismissal and sends case back to Court of Appeals for determination “on the merits”
- **August 9, 2016**- Oral Argument of case before Court of Appeals
- **September 19, 2017**- Court of Appeals issues opinion that RRC has authority to review SBOE rules, reverses Judge Gesner’s July 1, 2015 order; Justice Tyson dissents
- **October 23, 2017**- SBOE files notice of appeal to Supreme Court, as of right based upon Justice Tyson’s dissent
- **December 15, 2017**- Supreme Court, on its own motion, issues order for expedited briefing schedule in this case and SBOE v. State of North Carolina and Mark Johnson, as Superintendent case

**Oral Argument for both cases set for**

**February 7, 2018**